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SUPREME COURT, U.S.

No. 80-2082

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1980

J. BOLES, J. M. CHECK,
E. M. CAMY and T. WHEATON,

Petitioners,

vs.

WILLIAM CHAVIS,

Respondent.

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Pursuant to Rule 46.1 of the Rules of this Court, motion is hereby made that the Respondent be allowed to proceed in forma pauperis before this Court.

Respondent sought and was granted leave to proceed in forma pauperis before the United States District Court and the United States Court of Appeals. Respondent was represented in the Court below by counsel appointed pursuant to the provisions of the Criminal Justice Act of 1964, as amended, Title 18, United States Code, Section 3006A.

Respectfully submitted,

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BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether the suppression by a prison disciplinary board of exculpatory evidence material to the innocence of a prisoner in a disciplinary hearing is violative of the due process rights of the inmate.

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BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

Respondent respectfully prays that the petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit be denied.

STATEMENT OF THE CASE

Respondent William Chavis, a convicted state prisoner in the custody of the Illinois Department of Corrections, filed an action in the United States District Court for the Northern District of Illinois seeking monetary damages, injunctive and declaratory relief pursuant to the provisions of Title 42, United States Code, Section 1983. The complaint arises from a series of events beginning on September 28, 1976, in the Stateville Correctional Center at

Joliet, Illinois where Chavis was incarcerated. Correctional Officer Robert H. Sipp was stabbed on that date while escorting a group of residents within the institution. Chavis was a member of the group being escorted by Officer Sipp and was named in an Inmate Violation Report authored by Sipp on September 30, 1976.

Sipp stated in the Violation Report that he was attacked and stabbed by an unknown inmate. After the stabbing, he saw Chavis standing with his hands in his pockets. Sipp heard somebody say, "Kill the son of a bitch" and observed Chavis take his hands out of his pockets and move toward the officer. As other inmates moved toward him, Sipp turned and ran. Sipp's Violation Report concluded with the allegation that when he saw Chavis, Sipp "already had been [stabbed] twice by the inmate that attacked [me]."

The Stateville Adjustment Committee held a hearing on October 2, 1976, and dismissed Sipp's report as improperly written. Petitioner, Captain J. Boles, a member of the Adjustment Committee reviewing Sipp's allegation, wrote a second Inmate Violation Report on October 9, 1976, relating to the same stabbing incident. It charged Chavis with "assaulting an employee." Further describing the offense, Boles alleged in the Violation Report that, "[t]hrough investigation you have been identified as having stabbed Officer R. Sipp."

A disciplinary hearing was held on October 12, 1976 concerning the Boles' Violation Report. The Adjustment Committee was composed of Petitioners J. M. Check, Chairman of the Committee, E. M. Camy, a State Correctional Counselor, and Captain T. Wheaton, a Correctional Officer. Chavis informed the Committee of the Violation Report previously written by Officer Sipp which indicated that Chavis was not the person who had stabbed him. Chavis also denied any

involvement in the incident. The Committee found Chavis guilty and ordered him stripped of two years of statutory good time, transferred to segregation and demoted to "C Grade." The Committee stated in handwritten findings that it accepted "the investigative report as being true." In typed findings, the Committee identified the evidence upon which it relied as follows: "We recognize and consider resident[']s statement[,] however[,] we accept the reporting officer[']s charges." Accordingly, Chavis was immediately transferred from the general prison population to the segregation unit where he shared a cell with four other inmates.

On November 1, 1976, the Stateville Inquiry Board, in response to a grievance filed by Chavis, found no error in the disciplinary proceedings. Chavis appealed that finding to the Administrative Review Board of the Department of Corrections. On February 4, 1977, the Review Board interviewed Chavis and the Stateville Assistant Warden. It also reviewed Chavis' master record file as well as a copy of the investigation report upon which the Adjustment Committee had relied. The Review Board concluded that the investigation report did not substantiate Officer Boles' allegations of the stabbing in the October 9, 1976 Violation Report.

The Review Board noted that the report contained the results of a polygraph examination which had been administered to another Stateville resident who provided information about Officer Sipp's stabbing. Specifically, the examination showed that the resident was truthful when he identified someone other than Chavis as having stabbed Officer Sipp. Therefore, the Review Board recommended expungement of the disciplinary report from any and all institutional records, Chavis' release from segregation, grade restoration, and restoration of statutory good time.

Charles J. Rowe, Acting Director of the Illinois Department of Corrections, concurred in those findings and ordered Chavis' administrative transfer to the Menard, Illinois Correctional Center by March 31, 1977.*/ Chavis was released from segregation status shortly after arriving at Menard.

Chavis filed his complaint in the United States District Court against petitioners on September 23, 1977, alleging violations of his rights under the eighth and fourteenth amendments to the United States Constitution. Jurisdiction was alleged under Title 28, United States Code, Section 1343. Chavis asserted, inter alia, that the failure to grant access to the investigation report upon which the Adjustment Committee relied deprived him of his fourteenth amendment right to due process of law. On May 31, 1978, Chavis' entire complaint was dismissed by the district court for failure to state a claim upon which relief could be granted.

Chavis appealed the order of dismissal in forma pauperis. On March 11, 1981, the United States Court of Appeals for the Seventh Circuit reversed the district court's dismissal of Chavis' complaint on several grounds and remanded the case for further proceedings. The court of appeals held, inter alia, that the Adjustment Committee's failure to disclose the exculpatory material contained in the investigation report or its substance resulted in a

---

*/ Rowe, a defendant as to other issues presented in the court below, was properly dismissed as a defendant to the claim which is the subject of this Petition and is not, therefore, a Petitioner.

miscarriage of justice for which Chavis' complaint adequately stated a due process claim upon which relief could be granted.

The court of appeals also remanded for further proceedings on four other claims. It ruled that Chavis' complaint stated a claim for: (1) due process violations arising from the Adjustment Committee's failure to provide Chavis with an adequate written statement of the reasons for the disciplinary action taken and the evidence relied upon as required by Wolff v. McDonnell, 418 U.S. 539, 564-65; (2) due process violations arising from that Chavis' transfer from Stateville to Mendard without a hearing or notice of the reasons for the transfer; (3) eighth amendment violations arising from the overcrowded condition of the five-man segregation cell where he was incarcerated for almost six months; and (4) eighth amendment violations arising from the failure of prison officials to provide him with adequate bedding, light, toilet facilities, showers, access to legal materials, medical and dental care and food. Chavis v. Rowe, 643 F.2d at 1287, 1290, 1291.

REASONS FOR DENYING THE WRIT

I.

This Court Should Not Review One Part Of A Decision Reversing An Order Dismissing A Complaint And Remanding For Further Proceedings On Several Issues.

Petitioners seek this Court's review of only one of the five grounds on which the court of appeals held that Chavis had stated a claim upon which relief could be granted. The dismissal of this case has been reversed and it has been remanded to the district court for further proceedings. There has been no showing that immediate review is necessary to prevent some hardship to the litigants in this case. Neither has there been a showing of a special and important reason for review of a decision which is interlocutory in nature.

Because this matter has been remanded for further proceedings on a series of issues, this case is not yet ripe for review. Ordinarily, petitions for certiorari to review non-final judgments are not granted by this Court. Cobbledick v. United States, 309 U.S. 323, 324-325 (1940); American Construction Co. v. Jacksonville, Tampa & Key West Ry., 148 U.S. 372, 384 (1893). The lack of finality alone is a sufficient reason for the denial of certiorari. Brotherhood of Locomotive Firemen v. Bangor & Aroostook R.R., 389 U.S. 327, 328 (1967); Hamilton-Brown Shoe Co. v. Wolf Bros. & Co., 240 U.S. 251, 258 (1916). Moreover, resolution of the single issue raised by the certiorari petition will not assist in the continued direction of the case on remand. Therefore, the case at bar does not present a non-final

order appropriate for review. Larson v. Domestic & Foreign Commerce Corp., 337 U.S. 682, 685 n.3 (1949); Land v. Dollar, 330 U.S. 731, 734 n.2 (1947)

Nor will this case be expedited in any manner by review at this time. The district court must still consider Respondent's remaining due process and eighth amendment claims. Beyond Chavis' complaint and Petitioners' Motion to Dismiss, there has been no discovery. Only the facts alleged in the complaint and its incorporated exhibits are presently available to shed light upon the disciplinary hearing and its consequences. There has been no development of the facts of this case to assist this Court in resolving the issues. Moreover, the due process claim challenged here is completely interwoven with a second due process violation found by the court below but not presented to this Court -- the violation arising from the Adjustment Committee's failure adequately to document in writing its findings and the evidence to support them. These issues cannot be separated either legally or factually and should be dealt with together by the district court when the facts are developed.

In essence, Petitioners seek the very type of piecemeal review of a single controversy which this Court has condemned. As the Court stated in Cobbledick v. United States, 309 U.S. 323, 325 (1940), the momentum of judicial administration "would be arrested by permitting separate reviews of the component elements in a unified case." This Court can best review the final judgment of the court below when it is supported by a complete record containing all findings, conclusions and rulings.

II.

Intervention By This Court In Its Supervisory Capacity Is Not Warranted.

A.

The Court of Appeals Gave Adequate Cognizance to Prison Security Considerations.

The court of appeals held that Chavis' complaint stated a cognizable due process claim. The charge before the Adjustment Committee was assault upon an officer. The court found a due process violation because the Adjustment Committee had in its possession evidence never made available to the accused and which totally contradicted the charge. That contradictory evidence established that a prisoner other than the accused committed the stabbing. Further, the evidence was corroborated by a polygraph examination. The court of appeals concluded that the Adjustment Committee's decision resulted in a due process violation because "simple fair play required disclosure to [Chavis] of the exculpatory material or its substance . . . ." Chavis v. Rowe, 643 F.2d 1281, 1286 (7th Cir. 1981) (emphasis in original).

Petitioners assert that the court of appeals failed to recognize and "perceive the adverse consequences on internal administration of a prison" which would result from a requirement that exculpatory evidence be produced in a prison disciplinary hearing. (Petitioners' Br. 7-8). The primary administrative difficulty asserted is that if authorities must comply with the decision below, inmates will no longer come to prison authorities as informants for fear that their identity will be exposed.

Contrary to Petitioners' argument, the court of appeals carefully considered, in accordance with Wolff v.

McDonnell, 418 U.S. 539 (1974), whether imposition of its ruling would adversely affect the interest of the state in maintaining peace and security in correctional institutions. The court concluded:

> Conceivably there may be situations in which prison officials reasonably fear that disclosure of the entire [investigative] report, certain names of other prisoners, or the like, may cause disruption or danger. At the complaint stage, however, there is no reason to presume that type of situation, nor any reason why at least the substance of the other inmate's [exculpatory] statement could not safely have been disclosed to Chavis.

643 F.2d at 1286 (emphasis added). The court's opinion provides safeguards to avoid any potential administrative problem. It neither ordered the disclosure of all evidence obtained during an investigation nor the disclosure of an entire investigative report which might contain inmates' names or information which otherwise could cause institutional disruption or danger. Rather, the court found that "at the complaint stage," before the facts of the case have been developed, there is no reason to presume danger or assume that the substance of the exculpatory statement could not safely be disclosed to the accused. Moreover, the language of the decision anticipates that Petitioners will have an opportunity on remand to establish facts demonstrating a justification for the non-disclosure in this case.

Petitioners assert that a mere reading of the opinion will make inmates believe that their identity as informants is jeopardized. (Petitioners' Br. 8). Petitioners' argument that the decision below will thwart the generation of inmate informants is wholly without basis in this record. The court below specifically found in this case that the duty of prison authorities was to give Chavis "the fairest

hearing possible within the context of maintaining institutional safety." 643 F.2d at 1289. Petitioner's predictions about the manner in which this decision may be misread are patently specious.

B.

The Decision of the Court of Appeals Is Consistent With Wolff v. McDonnell.

This Court has established that the due process must be observed in a prison disciplinary hearing. Wolff v. McDonnell, 418 U.S. 539 (1974). The only question presented to the court below was whether Chavis' complaint stated a claim that due process had not been observed in his case.*/ The court of appeals specifically found that "the Adjustment Committee's procedures did not meet the minimum due process standards required by Wolff." 643 F.2d at 1285. The procedures found defective included both the failure of the Committee to give adequate written reasons for the imposition of punishment and its failure to grant Chavis access to exculpatory information. The court of appeals properly treated these two elements as intimately related in examining the fundamental requirements of due process in Chavis' case.

The court of appeals held that the least Chavis was entitled to was a finding based on some evidence. Had

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*/ Petitioners contend that prison disciplinary actions have less serious consequences than criminal prosecutions. (Petitioners' Br. 7). The degree of seriousness of the liberty deprivation entailed in Chavis' loss of two years of statutory good time and in his extended confinement in segregation is not at issue here. This question was raised and resolved in Wolff where this Court held the interest was sufficient to require due process protection.

the Committee given a clear statement of the reasons for the imposition of sanctions, it then would have seen the lack of evidence to support a finding of guilt in this case. If Chavis had access to the exculpatory evidence, he could have argued it to the Committee and assured that it was brought to their attention for consideration.

Wolff states that even in the prison context "[t]he touchstone of due process is protection of the individual against arbitrary action of the government." 418 U.S. at 558. This Court has repeatedly stated that fundamental due process is violated when there is a deprivation of liberty on the basis of a record totally devoid of evidentiary support. As Mr. Justice Black wrote in Thompson v. Louisville, 362 U.S. 199 (1960):

> Just as 'Conviction upon a charge not made would be sheer denial of due process,' so it is a violation of due process to convict and punish a man without evidence of his guilt.

362 U.S. at 206 (footnotes omitted). See, e.g., Douglas v. Buder, 412 U.S. 430, 432 (1973) (probation revocation); Boilermakers v. Hardeman, 401 U.S. 233, 246 (1971).

In this case, there was no evidence supporting the Adjustment Committee's finding. As the court of appeals states, Sipp's statement created doubt of Chavis' guilt by asserting that Chavis had his hands in his pockets during the incident. 643 F.2d at 1286. The other inmate's statement and the polygraph examination which supported it completely exculpated Chavis. This was the conclusion reached not only of the court of appeals, but by the Administrative Review Board itself. When the Review Board finally examined all the evidence, it concluded that there was no evidence to substantiate the disciplinary charge against Chavis.

Petitioners argue that the holding in this case is an improper extension of the decision in Brady v. Maryland, 373 U.S. 83 (1963) and United States v. Agurs, 427 U.S. 97 (1976). (Petitioners' Br. 5). It is not. The court of appeals did not extend either Brady or Agurs. It did not require full disclosure of all exculpatory information as is required in a criminal proceeding. It examined Brady and Agurs only for their underlying principle of fundamental fairness which requires both that a trier of fact consider all relevant evidence in reaching a conclusion of guilt or innocence and that an accused person have the opportunity to prepare his best defense.

The rule applied by the court of appeals is consistent with the holding in Wolff v. McDonnell. Due process is devoid of meaning if findings of guilt without evidence are permitted. This Court has specifically stated in Wolff that:

> [T]he provision for a written record helps to insure that administrators, faced with possible scrutiny by state officials and the public, and perhaps even the courts, where fundamental constitutional rights may have been abridged, will act fairly. Without written records, the inmate will be at a severe disadvantage in propounding his own cause to or defending himself from others. It may be that there will be occasions when personal or institutional safety is so implicated that the statement may properly exclude certain items of evidence, but in that event the statement should indicate the fact of the omission.

418 U.S. at 565. Nothing could be more inconsistent with the rudimentary demands of justice and due process than the arbitrary abrogation of liberty where there has been suppression of material evidence favorable to any accused.

In the instant case, because important facts were withheld, Chavis had no adequate opportunity to assess or argue the evidence against the charge that he stabbed

Officer Sipp. Thus, Chavis defended himself by denying the stabbing charge and arguing that the Committee should consider that Officer Sipp had already filed a charge against him arising out of the stabbing incident. Chavis argued that the original charge, which was dismissed, contained Sipp's acknowledgement that Sipp had already been stabbed when he first observed Chavis remove his hands from his pockets and come toward Sipp. Chavis had no opportunity to bolster that defense with the polygraph-tested statement exculpating him.

In rendering its opinion, the Adjustment Committee, in its handwritten finding, simply says that, "[w]e accept the investigation report as being true." Neither the report nor its substance was made available to the accused. The failure to make adequate findings is inseparably connected to the failure to grant Chavis access to the exculpatory evidence or its substance.

This case might have been obviated had the Committee made the detailed findings required. If Chavis had been able to argue the exculpatory evidence, he could have presented his case more forcefully. The Committee might well have acquitted him or the Inquiry Board could have reversed the decision as early as three weeks after the initial ruling stripping him of his good time credits and confining him in segregation. 643 F.2d at 1287.

The court of appeals' decision does not depart from the accepted and usual course of judicial proceedings. Nor does it involve an important question of public interest. It does not call for an exercise of this Court's supervisory power by the granting of a writ of certiorari to the court below. Fundamental fairness requires that prison discipline be premised on findings supported by evidence. The access

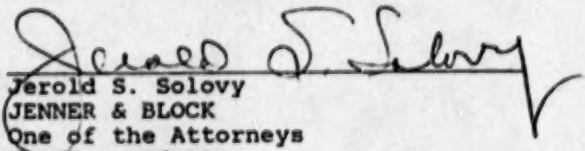
to exculpatory evidence and the reasons relied upon in imposing discipline are key elements in assuring this most basic requirement.

Finally, Petitioners have established no conflict between this decision and the decision of any state court or any other circuit among the federal courts of appeal.

CONCLUSION

Wherefore, for the reasons set forth above, it is respectfully submitted that the Petition for Certiorari should be denied.

Respectfully submitted,



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July 24, 1981

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STATE OF ILLINOIS)
) SS.
COUNTY OF C O O K)

CERTIFICATE OF MAILING

JEROLD S. SOLOVY, being first duly sworn on oath, states as follows:

I am a member of the Bar of this Court. On July 24, 1981, the date on which Respondent's Brief In Opposition To Petition For Certiorari was due to be filed in this Court, I caused a copy of that brief to be sealed in an envelope bearing sufficient first-class postage. Before the hour of 5:00 P.M., I caused the envelope to be deposited at the United States Post Office, Chicago, Illinois, properly addressed to:

Hon. Michael Rodak, Jr.
Clerk
United States Supreme Court
Washington, D.C. 20543

Respectfully submitted,

Jerold S. Solovy

SUBSCRIBED and SWORN TO before me this 24th day of July, 1981.

Notary Public

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CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of July, 1981, a copy of Respondent's Brief In Opposition To Petition For Certiorari to the United States Court of Appeals for the Seventh Circuit and an accompanying Motion For Leave To Proceed In Forma Pauperis were mailed from One IBM Plaza, Chicago, Illinois, postage prepaid, to Tyrone C. Fahner, Attorney General, State of Illinois, 160 North La Salle Street, Suite 800, Chicago, Illinois 60601, Attention: Paul J. Bargiel and Edward M. Kay,

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